IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1438 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASUDEV HARILAL UPADHYAYA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

Mr R V Desai, AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/02/2001

C A V JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for a declaration that the petitioner was entitled to be

considered for the post of promotion as Jr.Clerk and to direct the respondent to promote the petitioner to the said post of Jr.Clerk in the office of the second respondent. The petitioner has further prayed for appropriate writ, order or direction directing the respondent to complete the work of regularization of services of the employees within the time which may be specified by this court and not to make appointment by deputation from the District Panchayat till the said issue is decided by respondent no.1.

2. The facts may be briefly stated as follows. The petitioner claims to have studied upto T.Y.B.Com. That he was appointed as Peon in the year 1977. He was drawing the salary in the pay scale of Rs.196-232 (revised payscale of Rs.750-940). That the petitioner is entitled to be promoted as Junior Clerk as he is S.S.C. pass and has rendered about 13 years of service as Class IV employee. The petitioner also contended in the petition that the respondents are not discharging their duties of regularizing the services of the employees employed by the second respondent by providing the avenue of promotion and by enacting rules similar to those applicable to all Government and Panchayat employees and as the respondents have failed to comply with the judgment of this Court rendered far back in 1982 in sofar as the Rajkot District is concerned and are acting in breach of the Constitutional guarantees contained in Articles 14 and 16 of the Constitution of India by giving benefits of promotion etc. to the employees recruited in the Agency in other districts like Surat, Valsad and Junagadh. The petitioner claims that time and again, representation was made but the petitioner's case has never been considered by the respondents for promotion to the higher posts in Class III. It is contended by the petitioner that the employees similarly situated in other districts have been considered for promotion and have actually been promoted in other districts like Surat, Valsad and Junagadh. That the case of the petitioner has been singled out by the respondents and, therefore, it is alleged that the respondent-State has not been giving equal treatment to the equally situated persons in different districts. It is also contended by the petitioner that there are posts of Junior Clerk vacant with the second respondent and yet the said posts are not filled up by the second respondent by promoting the petitioner. The petitioner has contended that four peons were recruited by the second respondent in the year 1979 and the petitioner is the senior most amongst all the four peons working on the said post. That the respondent having not framed rules for recruiting persons as senior

or junior clerk and, therefore, the posts are filled up by bringing other employees on deputation and no recruitment is directly made. Therefore, there is no avenue of promotion since there is no rule for recruitment to the post of junior clerk. That therefore, the petitioner has been stagnated and has to continue to work as peon. In short, the question raised by the petitioner in this petition is that the petitioner has been recruited as peon in the year 1977 and there is no recruitment rule and, therefore, there is no rule for promotion and therefore, the petitioner is denied promotion to the post of Jr.Clerk. That the post of Junior Clerk and Senior Clerk are filled up by the respondents by bringing persons from other departments and, therefore, there is no avenue for promotion and hence the present petition has been filed for the aforesaid relief.

3. On receipt of the petition, rule was issued and served upon the respondents. The respondent has filed affidavit of Dy.Commissioner working in the Commissionerate of Rural Development, Gandhinagar at page 18. There the deponent has denied allegations made in the petition. However the fact that there is no recruitment rule framed by the second respondent does not appear to be contested by the deponent in this affidavit. With respect to the allegations made in the petition, the deponent has stated in the affidavit that four peons were recruited by the Agency. That the petitioner was appointed as Orderly on the basis of his application. That the Unit was closed down and, therefore, the petitioner was required to be terminated. Therefore, there is no question of giving promotion to the post of Jr.Clerk from the post of Peon. That the petitioner is the junior most amongst the peons. It is also contended that all the posts are required to be filled in by way of deputation and specific directive principles have been set out for administrative exigencies. At the end, it has been prayed that it is not necessary now to continue the interim relief. Therefore, the same may be vacated.

4. It seems that while receiving the petition, certain interim relief was granted and the aforesaid affidavit was filed by the aforesaid deponent for the vacation of the said interim relief. It may be noted that the said affidavit has been filed in February, 2001 in a matter which was filed in 1991.

5. I have heard the learned Advocates for the parties and have perused the papers. The facts are not very much in dispute. The petitioner was recruited as

Peon in 1977. It is also not much in dispute that the second respondent has not framed recruitment rules. Therefore, there is no provision for promoting any peon to the post of Jr.Clerk. There is no provision to promote Jr.Clerk to the post of Sr.Clerk also. It is an admitted position that all the posts are filled in by bringing persons from other departments on deputation. These facts are not at all in dispute.

6. At this juncture, learned Advocate for the petitioner has relied upon a couple of decisions of this court. In the case of A R Kabaria v State of Gujarat in Special Civil Application No.1809/87 (Coram: H K Rathod, J.) by disposing of the petition on 25.8.2000, this court had an occasion to refer to para 4 of an earlier decision of this court rendered in Special Civil Application No.4800/81. It would, therefore, be worthwhile to reproduce the said observation made in Special C.A No.4800/81 for ready reference as under:

"4. Special Civil Application no.4800 of 1981:

The petitioner was appointed as Clerk by an order made on January 2/3, 1973 by the Chairman of the Small Farmers Development Agency, Junagadh on a temporary basis. The petitioner resumed duty on January 3, 1973 (see Annexure "C") By an order dated January 6, 1979 issued by the Chairman of the Small Farmers Development Agency, Junagadh, the petitioner was promoted to the post of Senior Clerk in the pay scale of Rs. 330-560 on a purely temporary basis. (see Annexure "F"). The petitioner is still continuing to hold the said post. The next higher post to which the petitioner claims promotion is that of Aval Karkun."

The only difference between the facts of this case and the facts of the case in Special Civil Application no.4800/81 is that in the aforesaid matter, the petitioner was appointed as a Clerk and had pleaded for the promotion to the post of Sr.Clerk. In the case before us, he is a peon and claims promotion to the post of Jr.Clerk. Rest of the facts do not appear to be different. Similarly there is some sort of difference in the facts of this case and the facts of the case of Special C.A. No.1809/87. In the case before us the petitioner is a peon and he claims promotion to the post of Junior Clerk whereas in the foregoing case, the petitioner was an English Typist and he claimed promotion

to the post of Sr.Clerk. There also the post was filled by deputation in absence of recruitment rules.

7. This court, after considering the aforesaid decision came to a decision that this was not a healthy and proper practice on the part of the department. That because of this sort of petition, there is no avenue of promotion and all persons are being brought from other department on deputation. Therefore, even a peon does not get promotion to class III services. A Junior Clerk would not get promotion as Sr.Clerk and so this practice was deprecated and ultimately this court found that appropriate course would be to direct respondent to consider the case of the petitioner for promotion in question. Therefore, this court allowed the aforesaid Special Civil Application and directed the respondents to consider the case of the petitioner for promotion provided the petitioner is otherwise eligible and qualified to be appointed on the said post. Having regard to the facts and circumstances of the case and when the facts of this case are similar to the facts of Special Civil Application No.1890/87, it would be appropriate to follow the principles laid down in the said petition which has followed the principles of earlier petition disposed of earlier as referred to hereinabove. At the same time, there is no reason to differ from the stand taken in the earlier matters, the view adopted in the earlier matter and the principles enunciated therein. In view of the aforesaid decisions, this case is also found to be a fit case wherein an earlier decision should be followed meaning thereby that in the present matter also appropriate direction be given to the respondent. This would not mean that the petitioner has to be promoted by the respondent. The respondent will have only to consider the eligibility and the qualification of the petitioner which is required for the post of Junior Clerk. The respondents will also be required to consider the seniority, availability of vacant posts and such other aspects while taking decision in the matter. The respondents will certainly be at liberty to decide all the relevant questions at the time of considering the case of the petitioner in pursuance of the order of this court.

8. In view of the above, this petition is partly allowed. The respondents are directed to consider the case of the petitioner herein for promotion to the post of Jr.Clerk. It is made clear that while considering the case of the petitioner as aforesaid, it will be open to the respondents to consider the eligibility, suitability, qualifications, seniority, past records and other

required considerations while taking decision in the matter.

Rule is made absolute to the extent indicated above. There shall be no order as to costs.

Date: 23.2.2001 [D P Buch, J.]
msp